

AMENDED IN ASSEMBLY APRIL 23, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2543

Introduced by Assembly Member Levine

February 21, 2014

An act to amend Sections ~~1026 and 1370~~ *1027 and 1369* of the Penal Code, and to add Section 7233 to the Welfare and Institutions Code, relating to state hospitals.

LEGISLATIVE COUNSEL'S DIGEST

AB 2543, as amended, Levine. State hospitals: placement evaluations.

Existing law establishes the State Department of State Hospitals for the administration of state hospitals and provides for the involuntary confinement of certain individuals in those state hospitals, including defendants who have been found incompetent to stand trial and defendants found to be guilty of a crime, or who have plead not guilty by reason of insanity, and found to be insane at the time he or she committed the crime. *Existing law requires a court, when a defendant pleads not guilty by reason of insanity or if there is a question as to the defendant's mental competence, to appoint a specified number of psychiatrists or psychologists to examine the defendant.*

~~Existing law requires a court, except as specified, to direct that a defendant described above be confined in a state hospital or any other appropriate public or private treatment facility, or placed on outpatient status. Existing law requires the court, prior to making the order directing placement, to order the community program director, as defined, to evaluate the defendant and to submit a written~~

~~recommendation as to whether the defendant should be placed on outpatient status or confined in a state hospital or other treatment facility.~~

This bill would require the State Department of State Hospitals to establish, within the department, a pool of psychiatrists and psychologists with forensic skills and would require evaluation panels to be created from the pool of psychiatrists and psychologists, as specified. The bill would require the court to order an evaluation panel to evaluate ~~the a~~ defendant ~~and to submit a written recommendation relating to the defendant's placement who pleads not guilty by reason of insanity or who may be mentally incompetent.~~ The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1027 of the Penal Code is amended to
2 read:

3 1027. (a) When a defendant pleads not guilty by reason of
4 insanity the court shall ~~select and appoint two, and may select and~~
5 ~~appoint three, psychiatrists, or licensed psychologists who have a~~
6 ~~doctoral degree in psychology and at least five years of~~
7 ~~postgraduate experience in the diagnosis and treatment of emotional~~
8 ~~and mental disorders~~ *appoint an evaluation panel that has been*
9 ~~convened pursuant to Section 7233 of the Welfare and Institutions~~
10 ~~Code, to examine the defendant and investigate his or her mental~~
11 ~~status. It is the duty of the psychiatrists or psychologists selected~~
12 ~~and appointed~~ *evaluation panel* to make the examination and
13 investigation, and to testify, whenever summoned, in any
14 proceeding in which the sanity of the defendant is in question. The
15 ~~psychiatrists or psychologists appointed by the court~~ *members of*
16 ~~the evaluation panel~~ shall be allowed, in addition to their actual
17 traveling expenses, those fees that in the discretion of the court
18 seem just and reasonable, having regard to the services rendered
19 by the witnesses. The fees allowed shall be paid by the county
20 where the indictment was found or in which the defendant was
21 held for trial *to the State Department of State Hospitals.*

22 (b) Any report on the examination and investigation made
23 pursuant to subdivision (a) shall include, but not be limited to, the
24 psychological history of the defendant, the facts surrounding the

1 commission of the acts forming the basis for the present charge
2 used by the ~~psychiatrist or psychologist in making his or her~~
3 ~~evaluation panel in making the panel's~~ examination of the
4 defendant, the present psychological or psychiatric symptoms of
5 the defendant, if any, the substance abuse history of the defendant,
6 the substance use history of the defendant on the day of the offense,
7 a review of the police report for the offense, and any other credible
8 and relevant material reasonably necessary to describe the facts
9 of the offense.

10 (c) This section does not presume that ~~a psychiatrist or~~
11 ~~psychologist an evaluation panel~~ can determine whether a
12 defendant was sane or insane at the time of the alleged offense.
13 This section does not limit a court's discretion to admit or exclude,
14 pursuant to the Evidence Code, psychiatric or psychological
15 evidence about the defendant's state of mind or mental or emotional
16 condition at the time of the alleged offense.

17 (d) Nothing contained in this section shall be deemed or
18 construed to prevent any party to any criminal action from
19 producing any other expert evidence with respect to the mental
20 status of the defendant. If expert witnesses are called by the district
21 attorney in the action, they shall only be entitled to those witness
22 fees as may be allowed by the court.

23 (e) ~~Any psychiatrist or psychologist~~ *The members of an*
24 *evaluation panel* appointed by the court may be called by either
25 party to the action or by the court, and shall be subject to all legal
26 objections as to competency and bias and as to qualifications as
27 an expert. When called by the court or by either party to the action,
28 the court may examine the ~~psychiatrist or psychologist members~~
29 *of the evaluation panel*, as deemed necessary, but either party shall
30 have the same right to object to the questions asked by the court
31 and the evidence adduced as though the ~~psychiatrist or psychologist~~
32 ~~were a witness~~ *members of the panel were witnesses* for the adverse
33 party. When the ~~psychiatrist or psychologist~~ *a member of the panel*
34 is called and examined by the court, the parties may cross-examine
35 him or her in the order directed by the court. When called by either
36 party to the action, the adverse party may examine him or her the
37 same as in the case of any other witness called by the party.

38 *SEC. 2. Section 1369 of the Penal Code is amended to read:*

39 1369. A trial by court or jury of the question of mental
40 competence shall proceed in the following order:

1 (a) The court shall appoint a psychiatrist or licensed psychologist
2 *an evaluation panel that has been convened pursuant to Section*
3 *7233 of the Welfare and Institutions Code*, and any other expert
4 *with forensic experience* the court may deem appropriate, to
5 examine the defendant. In any case where the defendant or the
6 defendant's counsel informs the court that the defendant is not
7 seeking a finding of mental incompetence, ~~the court shall appoint~~
8 ~~two psychiatrists, licensed psychologists, or a combination thereof.~~
9 ~~One of the psychiatrists or licensed psychologists may be named~~
10 ~~by the defense and one may be named by the prosecution the~~
11 ~~defense and the prosecution shall each confer with the State~~
12 ~~Department of State Hospitals regarding the selection of the~~
13 ~~panelists.~~ The examining psychiatrists or licensed psychologists
14 ~~panelists~~ shall evaluate the nature of the defendant's mental
15 disorder, if any, the defendant's ability or inability to understand
16 the nature of the criminal proceedings or assist counsel in the
17 conduct of a defense in a rational manner as a result of a mental
18 disorder and, if within the scope of their licenses and appropriate
19 to their opinions, whether or not treatment with antipsychotic
20 medication is medically appropriate for the defendant and whether
21 antipsychotic medication is likely to restore the defendant to mental
22 competence. If an examining psychologist *panelist* is of the opinion
23 that antipsychotic medication may be medically appropriate for
24 the defendant and that the defendant should be evaluated by a
25 psychiatrist to determine if antipsychotic medication is medically
26 appropriate, the psychologist *panelist* shall inform the court of this
27 opinion and his or her recommendation as to whether a psychiatrist
28 should examine the defendant. The examining psychiatrists or
29 licensed psychologists *panelists* shall also address the issues of
30 whether the defendant has capacity to make decisions regarding
31 antipsychotic medication and whether the defendant is a danger
32 to self or others. If the defendant is examined by a psychiatrist and
33 the psychiatrist forms an opinion as to whether or not treatment
34 with antipsychotic medication is medically appropriate, the
35 psychiatrist shall inform the court of his or her opinions as to the
36 likely or potential side effects of the medication, the expected
37 efficacy of the medication, possible alternative treatments, and
38 whether it is medically appropriate to administer antipsychotic
39 medication in the county jail. If it is suspected the defendant is
40 developmentally disabled, the court shall appoint the director of

1 the regional center for the developmentally disabled established
2 under Division 4.5 (commencing with Section 4500) of the Welfare
3 and Institutions Code, or the designee of the director, to examine
4 the defendant. The court may order the developmentally disabled
5 defendant to be confined for examination in a residential facility
6 or state hospital.

7 The regional center director shall recommend to the court a
8 suitable residential facility or state hospital. Prior to issuing an
9 order pursuant to this section, the court shall consider the
10 recommendation of the regional center director. While the person
11 is confined pursuant to order of the court under this section, he or
12 she shall be provided with necessary care and treatment.

13 (b) (1) The counsel for the defendant shall offer evidence in
14 support of the allegation of mental incompetence.

15 (2) If the defense declines to offer any evidence in support of
16 the allegation of mental incompetence, the prosecution may do so.

17 (c) The prosecution shall present its case regarding the issue of
18 the defendant's present mental competence.

19 (d) Each party may offer rebutting testimony, unless the court,
20 for good reason in furtherance of justice, also permits other
21 evidence in support of the original contention.

22 (e) When the evidence is concluded, unless the case is submitted
23 without final argument, the prosecution shall make its final
24 argument and the defense shall conclude with its final argument
25 to the court or jury.

26 (f) In a jury trial, the court shall charge the jury, instructing
27 them on all matters of law necessary for the rendering of a verdict.
28 It shall be presumed that the defendant is mentally competent
29 unless it is proved by a preponderance of the evidence that the
30 defendant is mentally incompetent. The verdict of the jury shall
31 be unanimous.

32 *SEC. 3. Section 7233 is added to the Welfare and Institutions*
33 *Code, to read:*

34 *7233. (a) The State Department of State Hospitals shall*
35 *establish a pool of psychiatrists and psychologists with forensic*
36 *skills who are employees of the department from which evaluation*
37 *panels shall be created pursuant to subdivision (b).*

38 *(b) The department shall create evaluation panels with each*
39 *panel consisting of three to five forensic psychiatrists or*
40 *psychologists from the pool created in subdivision (a).*

1 SECTION 1. Section 1026 of the Penal Code is amended to read:

2 1026. (a) When a defendant pleads not guilty by reason of
3 insanity, and also joins with it another plea or pleas, the defendant
4 shall first be tried as if only that other plea or pleas had been
5 entered, and in that trial the defendant shall be conclusively
6 presumed to have been sane at the time the offense is alleged to
7 have been committed. If the jury finds the defendant guilty, or if
8 the defendant pleads only not guilty by reason of insanity, then
9 the question whether the defendant was sane or insane at the time
10 the offense was committed shall be promptly tried, either before
11 the same jury or before a new jury in the discretion of the court.
12 In that trial, the jury shall return a verdict either that the defendant
13 was sane at the time the offense was committed or was insane at
14 the time the offense was committed. If the verdict or finding is
15 that the defendant was sane at the time the offense was committed,
16 the court shall sentence the defendant as provided by law. If the
17 verdict or finding is that the defendant was insane at the time the
18 offense was committed, the court, unless it appears to the court
19 that the sanity of the defendant has been recovered fully, shall
20 direct that the defendant be confined in a state hospital for the care
21 and treatment of the mentally disordered or any other appropriate
22 public or private treatment facility approved by an evaluation panel
23 created pursuant to Section 7233 of the Welfare and Institutions
24 Code, or the court may order the defendant placed on outpatient
25 status pursuant to Title 15 (commencing with Section 1600) of
26 Part 2.

27 (b) Prior to making the order directing that the defendant be
28 confined in a state hospital or other treatment facility or placed on
29 outpatient status, the court shall order the evaluation panel to
30 evaluate the defendant and to submit to the court within 15 judicial
31 days of the order a written recommendation as to whether the
32 defendant should be placed on outpatient status or confined in a
33 state hospital or other treatment facility. A person shall not be
34 admitted to a state hospital or other treatment facility or placed on
35 outpatient status under this section without having been evaluated
36 by the evaluation panel. If, however, it appears to the court that
37 the sanity of the defendant has been recovered fully, the defendant
38 shall be remanded to the custody of the sheriff until the issue of
39 sanity shall have been finally determined in the manner prescribed
40 by law. A defendant committed to a state hospital or other treatment

1 facility or placed on outpatient status pursuant to Title 15
2 (commencing with Section 1600) of Part 2 shall not be released
3 from confinement, parole, or outpatient status unless and until the
4 court which committed the person shall, after notice and hearing,
5 find and determine that the person's sanity has been restored. This
6 section shall not prevent the transfer of the patient from one state
7 hospital to any other state hospital by proper authority. This section
8 shall not prevent the transfer of the patient to a hospital in another
9 state in the manner provided in Section 4119 of the Welfare and
10 Institutions Code.

11 (e) If the defendant is committed or transferred to a state hospital
12 pursuant to this section, the court may, upon receiving the written
13 recommendation of the medical director of the state hospital and
14 the evaluation panel that the defendant be transferred to a public
15 or private treatment facility approved by the evaluation panel,
16 order the defendant transferred to that facility. If the defendant is
17 committed or transferred to a public or private treatment facility
18 approved by the evaluation panel, the court may, upon receiving
19 the written recommendation of the evaluation panel, order the
20 defendant transferred to a state hospital or to another public or
21 private treatment facility approved by the evaluation panel. When
22 either the defendant or the prosecuting attorney chooses to contest
23 either kind of order of transfer, a petition may be filed in the court
24 requesting a hearing which shall be held if the court determines
25 that sufficient grounds exist. At that hearing, the prosecuting
26 attorney or the defendant may present evidence bearing on the
27 order of transfer. The court shall use the same procedures and
28 standards of proof as used in conducting probation revocation
29 hearings pursuant to Section 1203.2.

30 (d) Prior to making an order for transfer under this section, the
31 court shall notify the defendant, the attorney of record for the
32 defendant, the prosecuting attorney, and the evaluation panel.

33 (e) When the court, after considering the placement
34 recommendation of the evaluation panel required in subdivision
35 (b), orders that the defendant be confined in a state hospital or
36 other public or private treatment facility, the court shall provide
37 copies of the following documents which shall be taken with the
38 defendant to the state hospital or other treatment facility where the
39 defendant is to be confined:

1 ~~(1) The commitment order, including a specification of the~~
2 ~~charges.~~

3 ~~(2) A computation or statement setting forth the maximum term~~
4 ~~of commitment in accordance with Section 1026.5.~~

5 ~~(3) A computation or statement setting forth the amount of credit~~
6 ~~for time served, if any, to be deducted from the maximum term of~~
7 ~~commitment.~~

8 ~~(4) State summary criminal history information.~~

9 ~~(5) Any arrest reports prepared by the police department or other~~
10 ~~law enforcement agency.~~

11 ~~(6) Any court-ordered psychiatric examination or evaluation~~
12 ~~reports.~~

13 ~~(7) The evaluation panel's placement recommendation report.~~

14 ~~(f) If the defendant is confined in a state hospital or other~~
15 ~~treatment facility as an inpatient, the medical director of the facility~~
16 ~~shall, at six-month intervals, submit a report in writing to the court~~
17 ~~and the evaluation panel setting forth the status and progress of~~
18 ~~the defendant. The court shall transmit copies of these reports to~~
19 ~~the prosecutor and defense counsel.~~

20 ~~(g) When directing that the defendant be confined in a state~~
21 ~~hospital pursuant to subdivision (a), the court shall select the state~~
22 ~~hospital in accordance with the policies established by the State~~
23 ~~Department of State Hospitals.~~

24 ~~(h) For purposes of Sections 1026.1 to 1026.6, inclusive,~~
25 ~~“community program director” means the person, agency, or entity~~
26 ~~designated by the State Department of State Hospitals pursuant to~~
27 ~~Section 1605 of this code and Section 5709.8 of the Welfare and~~
28 ~~Institutions Code.~~

29 ~~(i) For purposes of this section, “evaluation panel” means an~~
30 ~~evaluation panel created pursuant to Section 7233 of the Welfare~~
31 ~~and Institutions Code.~~

32 ~~SEC. 2. Section 1370 of the Penal Code is amended to read:~~

33 ~~1370. (a) (1) (A) If the defendant is found mentally~~
34 ~~competent, the criminal process shall resume, the trial on the~~
35 ~~offense charged shall proceed, and judgment may be pronounced.~~

36 ~~(B) If the defendant is found mentally incompetent, the trial or~~
37 ~~judgment shall be suspended until the person becomes mentally~~
38 ~~competent.~~

39 ~~(i) In the meantime, the court shall order that the mentally~~
40 ~~incompetent defendant be delivered by the sheriff to a state hospital~~

1 for the care and treatment of the mentally disordered, or to any
2 other available public or private treatment facility, including a
3 local county jail treatment facility, approved by an evaluation panel
4 created pursuant to Section 7233 of the Welfare and Institutions
5 Code that will promote the defendant's speedy restoration to mental
6 competence, or be placed on outpatient status as specified in
7 Section 1600.

8 (ii) However, if the action against the defendant who has been
9 found mentally incompetent is on a complaint charging a felony
10 offense specified in Section 290, the prosecutor shall determine
11 whether the defendant previously has been found mentally
12 incompetent to stand trial pursuant to this chapter on a charge of
13 a Section 290 offense, or whether the defendant is currently the
14 subject of a pending Section 1368 proceeding arising out of a
15 charge of a Section 290 offense. If either determination is made,
16 the prosecutor shall so notify the court and defendant in writing.
17 After this notification, and opportunity for hearing, the court shall
18 order that the defendant be delivered by the sheriff to a state
19 hospital or other secure treatment facility for the care and treatment
20 of the mentally disordered unless the court makes specific findings
21 on the record that an alternative placement would provide more
22 appropriate treatment for the defendant and would not pose a
23 danger to the health and safety of others.

24 (iii) If the action against the defendant who has been found
25 mentally incompetent is on a complaint charging a felony offense
26 specified in Section 290 and the defendant has been denied bail
27 pursuant to subdivision (b) of Section 12 of Article I of the
28 California Constitution because the court has found, based upon
29 clear and convincing evidence, a substantial likelihood that the
30 person's release would result in great bodily harm to others, the
31 court shall order that the defendant be delivered by the sheriff to
32 a state hospital for the care and treatment of the mentally disordered
33 unless the court makes specific findings on the record that an
34 alternative placement would provide more appropriate treatment
35 for the defendant and would not pose a danger to the health and
36 safety of others.

37 (iv) The clerk of the court shall notify the Department of Justice
38 in writing of any finding of mental incompetence with respect to
39 a defendant who is subject to clause (ii) or (iii) for inclusion in his
40 or her state summary criminal history information.

1 ~~(C) Upon the filing of a certificate of restoration to competence,~~
2 ~~the court shall order that the defendant be returned to court in~~
3 ~~accordance with Section 1372. The court shall transmit a copy of~~
4 ~~its order to the evaluation panel.~~

5 ~~(D) A defendant charged with a violent felony may not be~~
6 ~~delivered to a state hospital or treatment facility pursuant to this~~
7 ~~subdivision unless the state hospital or treatment facility has a~~
8 ~~secured perimeter or a locked and controlled treatment facility,~~
9 ~~and the judge determines that the public safety will be protected.~~

10 ~~(E) For purposes of this paragraph, “violent felony” means an~~
11 ~~offense specified in subdivision (c) of Section 667.5.~~

12 ~~(F) A defendant charged with a violent felony may be placed~~
13 ~~on outpatient status, as specified in Section 1600, only if the court~~
14 ~~finds that the placement will not pose a danger to the health or~~
15 ~~safety of others. If the court places a defendant charged with a~~
16 ~~violent felony on outpatient status, as specified in Section 1600,~~
17 ~~the court must serve copies of the placement order on defense~~
18 ~~counsel, the sheriff in the county where the defendant will be~~
19 ~~placed and the district attorney for the county in which the violent~~
20 ~~felony charges are pending against the defendant.~~

21 ~~(2) Prior to making the order directing that the defendant be~~
22 ~~confined in a state hospital or other treatment facility or placed on~~
23 ~~outpatient status, the court shall proceed as follows:~~

24 ~~(A) The court shall order the evaluation panel to evaluate the~~
25 ~~defendant and to submit to the court within 15 judicial days of the~~
26 ~~order a written recommendation as to whether the defendant should~~
27 ~~be required to undergo outpatient treatment, or committed to a~~
28 ~~state hospital or to any other treatment facility. A person shall not~~
29 ~~be admitted to a state hospital or other treatment facility or placed~~
30 ~~on outpatient status under this section without having been~~
31 ~~evaluated by the evaluation panel. The evaluation panel shall~~
32 ~~evaluate the appropriate placement for the defendant between a~~
33 ~~state hospital or a local county jail treatment facility based upon~~
34 ~~guidelines provided by the State Department of State Hospitals.~~
35 ~~If a local county jail treatment facility is selected, the State~~
36 ~~Department of State Hospitals shall provide treatment at the county~~
37 ~~jail treatment facility and reimburse the county jail treatment~~
38 ~~facility for the reasonable costs of the bed during the treatment.~~
39 ~~The six-month limitation in Section 1369.1 shall not apply to~~
40 ~~individuals deemed incompetent to stand trial who are being treated~~

1 to restore competency within a county jail treatment facility
2 pursuant to this section.

3 (B) The court shall hear and determine whether the defendant
4 lacks capacity to make decisions regarding the administration of
5 antipsychotic medication, and shall proceed as follows:

6 (i) The court shall hear and determine whether any of the
7 following is true:

8 (I) The defendant lacks capacity to make decisions regarding
9 antipsychotic medication, the defendant's mental disorder requires
10 medical treatment with antipsychotic medication, and, if the
11 defendant's mental disorder is not treated with antipsychotic
12 medication, it is probable that serious harm to the physical or
13 mental health of the patient will result. Probability of serious harm
14 to the physical or mental health of the defendant requires evidence
15 that the defendant is presently suffering adverse effects to his or
16 her physical or mental health, or the defendant has previously
17 suffered these effects as a result of a mental disorder and his or
18 her condition is substantially deteriorating. The fact that a
19 defendant has a diagnosis of a mental disorder does not alone
20 establish probability of serious harm to the physical or mental
21 health of the defendant.

22 (II) The defendant is a danger to others, in that the defendant
23 has inflicted, attempted to inflict, or made a serious threat of
24 inflicting substantial physical harm on another while in custody;
25 or the defendant had inflicted, attempted to inflict, or made a
26 serious threat of inflicting substantial physical harm on another
27 that resulted in his or her being taken into custody, and the
28 defendant presents, as a result of mental disorder or mental defect,
29 a demonstrated danger of inflicting substantial physical harm on
30 others. Demonstrated danger may be based on an assessment of
31 the defendant's present mental condition, including a consideration
32 of past behavior of the defendant within six years prior to the time
33 the defendant last attempted to inflict, inflicted, or threatened to
34 inflict substantial physical harm on another, and other relevant
35 evidence.

36 (III) The people have charged the defendant with a serious crime
37 against the person or property, involuntary administration of
38 antipsychotic medication is substantially likely to render the
39 defendant competent to stand trial, the medication is unlikely to
40 have side effects that interfere with the defendant's ability to

1 understand the nature of the criminal proceedings or to assist
2 counsel in the conduct of a defense in a reasonable manner, less
3 intrusive treatments are unlikely to have substantially the same
4 results, and antipsychotic medication is in the patient's best medical
5 interest in light of his or her medical condition.

6 (ii) ~~If the court finds any of the conditions described in clause~~
7 ~~(i) to be true, the court shall issue an order authorizing the treatment~~
8 ~~facility to involuntarily administer antipsychotic medication to the~~
9 ~~defendant when and as prescribed by the defendant's treating~~
10 ~~psychiatrist. The court shall not order involuntary administration~~
11 ~~of psychotropic medication under subclause (III) of clause (i)~~
12 ~~unless the court has first found that the defendant does not meet~~
13 ~~the criteria for involuntary administration of psychotropic~~
14 ~~medication under subclause (I) of clause (i) and does not meet the~~
15 ~~criteria under subclause (II) of clause (i).~~

16 (iii) ~~In all cases, the treating hospital, facility, or program may~~
17 ~~administer medically appropriate antipsychotic medication~~
18 ~~prescribed by a psychiatrist in an emergency as described in~~
19 ~~subdivision (m) of Section 5008 of the Welfare and Institutions~~
20 ~~Code.~~

21 (iv) ~~If the court has determined that the defendant has the~~
22 ~~capacity to make decisions regarding antipsychotic medication,~~
23 ~~and if the defendant, with advice of his or her counsel, consents,~~
24 ~~the court order of commitment shall include confirmation that~~
25 ~~antipsychotic medication may be given to the defendant as~~
26 ~~prescribed by a treating psychiatrist pursuant to the defendant's~~
27 ~~consent. The commitment order shall also indicate that, if the~~
28 ~~defendant withdraws consent for antipsychotic medication, after~~
29 ~~the treating psychiatrist complies with subparagraph (C), the~~
30 ~~defendant shall be returned to court for a hearing in accordance~~
31 ~~with subparagraphs (C) and (D) regarding whether antipsychotic~~
32 ~~medication shall be administered involuntarily.~~

33 (v) ~~If the court has determined that the defendant has the~~
34 ~~capacity to make decisions regarding antipsychotic medication~~
35 ~~and if the defendant, with advice from his or her counsel, does not~~
36 ~~consent, the court order for commitment shall indicate that, after~~
37 ~~the treating psychiatrist complies with subparagraph (C), the~~
38 ~~defendant shall be returned to court for a hearing in accordance~~
39 ~~with subparagraphs (C) and (D) regarding whether antipsychotic~~
40 ~~medication shall be administered involuntarily.~~

1 (vi) Any report made pursuant to paragraph (1) of subdivision
2 (b) shall include a description of any antipsychotic medication
3 administered to the defendant and its effects and side effects,
4 including effects on the defendant's appearance or behavior that
5 would affect the defendant's ability to understand the nature of
6 the criminal proceedings or to assist counsel in the conduct of a
7 defense in a reasonable manner. During the time the defendant is
8 confined in a state hospital or other treatment facility or placed on
9 outpatient status, either the defendant or the people may request
10 that the court review any order made pursuant to this subdivision.
11 The defendant, to the same extent enjoyed by other patients in the
12 state hospital or other treatment facility, shall have the right to
13 contact the patients' rights advocate regarding his or her rights
14 under this section.

15 (C) If the defendant consented to antipsychotic medication as
16 described in clause (iv) of subparagraph (B), but subsequently
17 withdraws his or her consent, or, if involuntary antipsychotic
18 medication was not ordered pursuant to clause (v) of subparagraph
19 (B), and the treating psychiatrist determines that antipsychotic
20 medication has become medically necessary and appropriate, the
21 treating psychiatrist shall make efforts to obtain informed consent
22 from the defendant for antipsychotic medication. If informed
23 consent is not obtained from the defendant, and the treating
24 psychiatrist is of the opinion that the defendant lacks capacity to
25 make decisions regarding antipsychotic medication based on the
26 conditions described in subclause (I) or (II) of clause (i) of
27 subparagraph (B), the treating psychiatrist shall certify whether
28 the lack of capacity and any applicable conditions described above
29 exist. That certification shall contain an assessment of the current
30 mental status of the defendant and the opinion of the treating
31 psychiatrist that involuntary antipsychotic medication has become
32 medically necessary and appropriate.

33 (D) (i) If the treating psychiatrist certifies that antipsychotic
34 medication has become medically necessary and appropriate
35 pursuant to subparagraph (C), antipsychotic medication may be
36 administered to the defendant for not more than 21 days, provided,
37 however, that, within 72 hours of the certification, the defendant
38 is provided a medication review hearing before an administrative
39 law judge to be conducted at the facility where the defendant is
40 receiving treatment. The treating psychiatrist shall present the case

1 for the certification for involuntary treatment and the defendant
2 shall be represented by an attorney or a patients' rights advocate.
3 The attorney or patients' rights advocate shall be appointed to meet
4 with the defendant no later than one day prior to the medication
5 review hearing to review the defendant's rights at the medication
6 review hearing, discuss the process, answer questions or concerns
7 regarding involuntary medication or the hearing, assist the
8 defendant in preparing for the hearing and advocating for his or
9 her interests at the hearing, review the panel's final determination
10 following the hearing, advise the defendant of his or her right to
11 judicial review of the panel's decision, and provide the defendant
12 with referral information for legal advice on the subject. The
13 defendant shall also have the following rights with respect to the
14 medication review hearing:

15 (I) To being given timely access to the defendant's records.

16 (II) To be present at the hearing, unless the defendant waives
17 that right.

18 (III) To present evidence at the hearing.

19 (IV) To question persons presenting evidence supporting
20 involuntary medication.

21 (V) To make reasonable requests for attendance of witnesses
22 on the defendant's behalf.

23 (VI) To a hearing conducted in an impartial and informal
24 manner.

25 (ii) If the administrative law judge determines that the defendant
26 either meets the criteria specified in subclause (I) of clause (i) of
27 subparagraph (B), or meets the criteria specified in subclause (II)
28 of clause (i) of subparagraph (B), then antipsychotic medication
29 may continue to be administered to the defendant for the 21-day
30 certification period. Concurrently with the treating psychiatrist's
31 certification, the treating psychiatrist shall file a copy of the
32 certification and a petition with the court for issuance of an order
33 to administer antipsychotic medication beyond the 21-day
34 certification period. For purposes of this subparagraph, the treating
35 psychiatrist shall not be required to pay or deposit any fee for the
36 filing of the petition or other document or paper related to the
37 petition.

38 (iii) If the administrative law judge disagrees with the
39 certification, medication may not be administered involuntarily

1 until the court determines that antipsychotic medication should be
2 administered pursuant to this section.

3 (iv) The court shall provide notice to the prosecuting attorney
4 and to the attorney representing the defendant, and shall hold a
5 hearing, no later than 18 days from the date of the certification, to
6 determine whether antipsychotic medication should be ordered
7 beyond the certification period.

8 (v) If, as a result of the hearing, the court determines that
9 antipsychotic medication should be administered beyond the
10 certification period, the court shall issue an order authorizing the
11 administration of that medication.

12 (vi) The court shall render its decision on the petition and issue
13 its order no later than three calendar days after the hearing and, in
14 any event, no later than the expiration of the 21-day certification
15 period.

16 (3) When the court orders that the defendant be confined in a
17 state hospital or other public or private treatment facility, the court
18 shall provide copies of the following documents which shall be
19 taken with the defendant to the state hospital or other treatment
20 facility where the defendant is to be confined:

21 (A) The commitment order, including a specification of the
22 charges.

23 (B) A computation or statement setting forth the maximum term
24 of commitment in accordance with subdivision (e).

25 (C) A computation or statement setting forth the amount of
26 credit for time served, if any, to be deducted from the maximum
27 term of commitment.

28 (D) State summary criminal history information.

29 (E) Any arrest reports prepared by the police department or
30 other law enforcement agency.

31 (F) Any court-ordered psychiatric examination or evaluation
32 reports.

33 (G) The evaluation panel's placement recommendation report.

34 (H) Records of any finding of mental incompetence pursuant
35 to this chapter arising out of a complaint charging a felony offense
36 specified in Section 290 or any pending Section 1368 proceeding
37 arising out of a charge of a Section 290 offense.

38 (4) When the defendant is committed to a treatment facility
39 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
40 court makes the findings specified in clause (ii) or (iii) of

1 subparagraph (B) of paragraph (1) to assign the defendant to a
2 treatment facility other than a state hospital or other secure
3 treatment facility, the court shall order that notice be given to the
4 appropriate law enforcement agency or agencies having local
5 jurisdiction at the site of the placement facility of any finding of
6 mental incompetence pursuant to this chapter arising out of a
7 charge of a Section 290 offense.

8 (5) When directing that the defendant be confined in a state
9 hospital pursuant to this subdivision, the court shall select the
10 hospital in accordance with the policies established by the State
11 Department of State Hospitals.

12 (6) (A) (i) If the defendant is committed or transferred to a
13 state hospital pursuant to this section, the court may, upon receiving
14 the written recommendation of the medical director of the state
15 hospital and the evaluation panel that the defendant be transferred
16 to a public or private treatment facility approved by the evaluation
17 panel, order the defendant transferred to that facility. If the
18 defendant is committed or transferred to a public or private
19 treatment facility approved by the evaluation panel, the court may,
20 upon receiving the written recommendation of the evaluation panel,
21 transfer the defendant to a state hospital or to another public or
22 private treatment facility approved by the evaluation panel. In the
23 event of dismissal of the criminal charges before the defendant
24 recovers competence, the person shall be subject to the applicable
25 provisions of the Lanterman-Petris-Short Act (Part 1 (commencing
26 with Section 5000) of Division 5 of the Welfare and Institutions
27 Code). If either the defendant or the prosecutor chooses to contest
28 either kind of order of transfer, a petition may be filed in the court
29 for a hearing, which shall be held if the court determines that
30 sufficient grounds exist. At the hearing, the prosecuting attorney
31 or the defendant may present evidence bearing on the order of
32 transfer. The court shall use the same standards as are used in
33 conducting probation revocation hearings pursuant to Section
34 1203.2.

35 (ii) Prior to making an order for transfer under this section, the
36 court shall notify the defendant, the attorney of record for the
37 defendant, the prosecuting attorney, and the evaluation panel.

38 (B) If the defendant is initially committed to a state hospital or
39 secure treatment facility pursuant to clause (ii) or (iii) of
40 subparagraph (B) of paragraph (1) and is subsequently transferred

1 to any other facility, copies of the documents specified in paragraph
2 (3) shall be taken with the defendant to each subsequent facility
3 to which the defendant is transferred. The transferring facility shall
4 also notify the appropriate law enforcement agency or agencies
5 having local jurisdiction at the site of the new facility that the
6 defendant is a person subject to clause (ii) or (iii) of subparagraph
7 (B) of paragraph (1).

8 (7) An order by the court authorizing involuntary medication
9 of the defendant shall be valid for no more than one year. The
10 court shall review the order six months after the order was made
11 to determine if the grounds for the authorization remain. In the
12 review, the court shall consider the reports of the treating
13 psychiatrist or psychiatrists and the defendant's patients' rights
14 advocate or attorney. The court may require testimony from the
15 treating psychiatrist or psychiatrists and the patients' rights
16 advocate or attorney, if necessary. The court may continue the
17 order authorizing involuntary medication for up to another six
18 months, or vacate the order, or make any other appropriate order.

19 (b) (1) Within 90 days of a commitment made pursuant to
20 subdivision (a), the medical director of the state hospital or other
21 treatment facility to which the defendant is confined shall make a
22 written report to the court and the evaluation panel concerning the
23 defendant's progress toward recovery of mental competence. When
24 the defendant is on outpatient status, the outpatient treatment staff
25 shall make a written report to the community program director
26 concerning the defendant's progress toward recovery of mental
27 competence. Within 90 days of placement on outpatient status, the
28 community program director shall report to the court on this matter.
29 If the defendant has not recovered mental competence, but the
30 report discloses a substantial likelihood that the defendant will
31 regain mental competence in the foreseeable future, the defendant
32 shall remain in the state hospital or other treatment facility or on
33 outpatient status. Thereafter, at six-month intervals or until the
34 defendant becomes mentally competent, where the defendant is
35 confined in a treatment facility, the medical director of the hospital
36 or person in charge of the facility shall report in writing to the
37 court and the evaluation panel regarding the defendant's progress
38 toward recovery of mental competence. When the defendant is on
39 outpatient status, after the initial 90-day report, the outpatient
40 treatment staff shall report to the community program director on

1 the defendant's progress toward recovery, and the community
2 program director shall report to the court on this matter at
3 six-month intervals. A copy of these reports shall be provided to
4 the prosecutor and defense counsel by the court. If the report
5 indicates that there is no substantial likelihood that the defendant
6 will regain mental competence in the foreseeable future, the
7 committing court shall order the defendant to be returned to the
8 court for proceedings pursuant to paragraph (2) of subdivision (c).
9 The court shall transmit a copy of its order to the evaluation panel.

10 (2) When the court has issued an order authorizing the treating
11 facility to involuntarily administer antipsychotic medication to the
12 defendant, the reports made at six-month intervals concerning the
13 defendant's progress toward regaining competency shall also
14 consider the issue of involuntary medication. Each report shall
15 include, but is not limited to, all the following:

16 (A) Whether or not the defendant has the capacity to make
17 decisions concerning antipsychotic medication.

18 (B) If the defendant lacks capacity to make decisions concerning
19 antipsychotic medication, whether the defendant risks serious harm
20 to his or her physical or mental health if not treated with
21 antipsychotic medication.

22 (C) Whether or not the defendant presents a danger to others if
23 he or she is not treated with antipsychotic medication.

24 (D) Whether the defendant has a mental illness for which
25 medications are the only effective treatment.

26 (E) Whether there are any side effects from the medication
27 currently being experienced by the defendant that would interfere
28 with the defendant's ability to collaborate with counsel.

29 (F) Whether there are any effective alternatives to medication.

30 (G) How quickly the medication is likely to bring the defendant
31 to competency.

32 (H) Whether the treatment plan includes methods other than
33 medication to restore the defendant to competency.

34 (I) A statement, if applicable, that no medication is likely to
35 restore the defendant to competency.

36 (3) After reviewing the reports, the court shall determine whether
37 or not grounds for the order authorizing involuntary administration
38 of antipsychotic medication still exist and shall do one of the
39 following:

1 (A) If the original grounds for involuntary medication still exist,
2 the order authorizing the treating facility to involuntarily administer
3 antipsychotic medication to the defendant shall remain in effect.

4 (B) If the original grounds for involuntary medication no longer
5 exist, and there is no other basis for involuntary administration of
6 antipsychotic medication, the order for the involuntary
7 administration of antipsychotic medication shall be vacated.

8 (C) If the original grounds for involuntary medication no longer
9 exist, and the report states that there is another basis for involuntary
10 administration of antipsychotic medication, the court shall set a
11 hearing within 21 days to determine whether the order for the
12 involuntary administration of antipsychotic medication shall be
13 vacated or whether a new order for the involuntary administration
14 of antipsychotic medication shall be issued. The hearing shall
15 proceed as set forth in subparagraph (B) of paragraph (2) of
16 subdivision (a).

17 (4) Any defendant who has been committed or has been on
18 outpatient status for 18 months and is still hospitalized or on
19 outpatient status shall be returned to the committing court where
20 a hearing shall be held pursuant to the procedures set forth in
21 Section 1369. The court shall transmit a copy of its order to the
22 community program director or a designee.

23 (5) If it is determined by the court that no treatment for the
24 defendant's mental impairment is being conducted, the defendant
25 shall be returned to the committing court. The court shall transmit
26 a copy of its order to the evaluation panel.

27 (6) At each review by the court specified in this subdivision,
28 the court shall determine if the security level of housing and
29 treatment is appropriate and may make an order in accordance
30 with its determination. If the court determines that the defendant
31 shall continue to be treated in the state hospital or on an outpatient
32 basis, the court shall determine issues concerning administration
33 of antipsychotic medication, as set forth in subparagraph (B) of
34 paragraph (2) of subdivision (a).

35 (e) (1) At the end of three years from the date of commitment
36 or a period of commitment equal to the maximum term of
37 imprisonment provided by law for the most serious offense charged
38 in the information, indictment, or misdemeanor complaint,
39 whichever is shorter, a defendant who has not recovered mental
40 competence shall be returned to the committing court. The court

1 shall notify the evaluation panel of the return and of any resulting
2 court orders.

3 ~~(2) Whenever any defendant is returned to the court pursuant~~
4 ~~to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this~~
5 ~~subdivision and it appears to the court that the defendant is gravely~~
6 ~~disabled, as defined in subparagraph (B) of paragraph (1) of~~
7 ~~subdivision (h) of Section 5008 of the Welfare and Institutions~~
8 ~~Code, the court shall order the conservatorship investigator of the~~
9 ~~county of commitment of the defendant to initiate conservatorship~~
10 ~~proceedings for the defendant pursuant to Chapter 3 (commencing~~
11 ~~with Section 5350) of Part 1 of Division 5 of the Welfare and~~
12 ~~Institutions Code. Any hearings required in the conservatorship~~
13 ~~proceedings shall be held in the superior court in the county that~~
14 ~~ordered the commitment. The court shall transmit a copy of the~~
15 ~~order directing initiation of conservatorship proceedings to the~~
16 ~~evaluation panel the sheriff and the district attorney of the county~~
17 ~~in which criminal charges are pending, and the defendant's counsel~~
18 ~~of record. The court shall notify the evaluation panel, the sheriff~~
19 ~~and district attorney of the county in which criminal charges are~~
20 ~~pending, and the defendant's counsel of record of the outcome of~~
21 ~~the conservatorship proceedings.~~

22 ~~(3) If a change in placement is proposed for a defendant who~~
23 ~~is committed pursuant to subparagraph (B) of paragraph (1) of~~
24 ~~subdivision (h) of Section 5008 of the Welfare and Institutions~~
25 ~~Code, the court shall provide notice and an opportunity to be heard~~
26 ~~with respect to the proposed placement of the defendant to the~~
27 ~~sheriff and the district attorney of the county in which criminal~~
28 ~~charges are pending.~~

29 ~~(4) If the defendant is confined in a treatment facility, a copy~~
30 ~~of any report to the committing court regarding the defendant's~~
31 ~~progress toward recovery of mental competence shall be provided~~
32 ~~by the committing court to the prosecutor and to the defense~~
33 ~~counsel.~~

34 ~~(d) The criminal action remains subject to dismissal pursuant~~
35 ~~to Section 1385. If the criminal action is dismissed, the court shall~~
36 ~~transmit a copy of the order of dismissal to the evaluation panel.~~

37 ~~(e) If the criminal charge against the defendant is dismissed,~~
38 ~~the defendant shall be released from any commitment ordered~~
39 ~~under this section, but without prejudice to the initiation of any~~
40 ~~proceedings that may be appropriate under the~~

~~Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.~~

~~(f) As used in this chapter, “community program director” means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.~~

~~(g) For the purpose of this section, “secure treatment facility” shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.~~

~~(h) For purposes of this section, “evaluation panel” means an evaluation panel created pursuant to Section 7233 of the Welfare and Institutions Code.~~

~~(i) This section shall not preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.~~

~~SEC. 3. Section 7233 is added to the Welfare and Institutions Code, to read:~~

~~7233. (a) The State Department of State Hospitals shall establish a pool of psychiatrists and psychologists with forensic skills who are employees of the department from which evaluation panels shall be created pursuant to subdivision (b).~~

~~(b) The department shall create evaluation panels with each panel consisting of three to five, inclusive, forensic psychiatrists or psychologists from the pool created in subdivision (a).~~